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WESTERN DISTRICT OF WASHINGTON
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

15 JASON SCHMIDT,

16 Plaintiff,

17 v.

21 CITY OF SEATTLE (SPD),
22 RICHARD ZURCHER, individually
23 and in his capacity as an OFFICER of
the SEATTLE POLICE DEPT.,
25 and JANE DOE ZURCHER, and the
26 marital community thereof; DET.
27 KATHRYN HERNAN, individually and
28 In her Official capacity as a

29 DETECTIVE of the SEATTLE POLICE)
30 DEPARTMENT, and JOHN DOE)
31 HERNAN and the Marital community)
32 thereof; D. LOWE individually and in his)
33 Official Capacity as a LIEUTENANT)
34 of the SEATTLE POLICE)
35 DEPARTMENT, and JANE DOE LOWE)
36 and the Marital community thereof;)
37 DEFENDANT GIL KERLIKOWSKE,)
38 individually and in his Official capacity)
39 as the CHIEF of the SEATTLE POLICE)
40 DEPARTMENT, and JANE DOE)
41 KERLIKOWSKE and the Marital)

SCHMIDT V. CITY OF SEATTLE-COMPLAINT

) NO. C 08-0105-TSZ
) COMPLAINT FOR VIOLATIONS OF
) CIVIL RIGHTS, FALSE ARREST, FALSE
) IMPRISONMENT, MALICIOUS
) PROSECUTION, BATTERY, ASSAULT,
) INTENTIONAL INFILCTION OF
) EMOTIONAL DISTRESS, NEGLIGENCE
)
) JURY TRIAL DEMANDED



547 585 603

08-CV-00105-CMP

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Community thereof; DOES 1-100,
Defendants.

6 JASON SCHMIDT the Plaintiff herein, by and through his attorneys, alleges as
7 follows:

I. JURISDICTION

- 12 1. This court has jurisdiction over the subject matter of this action pursuant to
13 Title 28, United States Code Sections 1331, 1332, 1343, and 1367, and venue is
14 properly set in the Western District Federal Court pursuant to 28 U.S.C. 1391.
15 2. The claims upon which this suit is based occurred in this judicial district.
16 3. Plaintiff is informed and believes, and on that basis alleges, that each of the
17 named Defendants reside in this judicial district.

II. PARTIES

- 20 1:1 Plaintiff JASON SCHMIDT is a single man residing primarily in the State
21 of Washington, in King County within the Western District of Washington. Plaintiff was
22 the victim of a false arrest, false imprisonment, excessive force, malicious prosecution
23 based on the false arrest and police false statements concerning the circumstances of
24 the arrest.

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1 1.2 Defendant RICHARD ZURCHER and JANE DOE ZURCHER constitute
2 a marital community under the laws of the State of Washington and upon belief reside
3 in King County within the Western District of Washington State. Upon belief,
4 RICHARD ZURCHER is and was at the time of the injuries complained of in this
5 complaint, an employee and/or agent of the CITY OF SEATTLE, i.e. the SEATTLE
6 POLICE DEPARTMENT (hereinafter identified as SPD) acting within the scope of his
7 duties.

8 1.3 DETECTIVE KATHRYN HERNAN and JOHN DOE HERNAN constitute
9 a marital community under the laws of the State of Washington and upon belief reside
10 in King County within the Western District of Washington State. Upon knowledge and
11 belief, DETECTIVE KATHRYN HERNAN is and was at the time of the injuries
12 complained of in this complaint, an employee and/or agent of the CITY OF SEATTLE,
13 i.e. the SEATTLE POLICE DEPARTMENT (hereinafter identified as SPD) acting
14 within the scope of her duties.

15 1.4 Defendant LIEUTENANT D. LOWE and JANE DOE LOWE constitute a
16 marital community under the laws of the State of Washington and upon belief reside in
17 King County within the Western District of Washington State. Upon belief,
18 LIEUTENANT D. LOWE is and was at the time of the injuries complained of in this
19 complaint, an employee and/or agent of the CITY OF SEATTLE i.e. the SEATTLE
20 POLICE DEPARTMENT (hereinafter identified as SPD) acting within the scope of his
21 duties.

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1 1.5 Defendant CHIEF GIL KERLIKOWSKE and JANE DOE KERLIKOWSKE
2 constitute a marital community under the laws of the State of Washington and upon
3 belief reside in King County within the Western District of Washington State. Upon
4 belief, CHIEF GIL KERLIKOWSKE is and was at the time of the injuries complained of
5 in this complaint, an employee and/or agent of the CITY OF SEATTLE i.e. the
6 SEATTLE POLICE DEPARTMENT (hereinafter identified as SPD) acting within the
7 scope of his duties.

8 1.6 DEFENDANT CITY OF SEATTLE is a government entity in KING
9 COUNTY governed and functioning under the laws of the State of Washington. It
10 employs the Officers of the SEATTLE POLICE DEPARTMENT listed above
11 (Defendants ZURCHER, HERNAN, and LOWE) and other police officers whose
12 identities are unknown, who were involved in crowd control, and other functions at the
13 demonstration at which Defendant was arrested and participated in the detention,
14 false arrest, false imprisonment, and use of excessive and unnecessary force against
15 Plaintiff and the resulting malicious prosecution.

16 1.6 There are other persons, identities presently unknown to Plaintiff who
17 are, and were at all times mentioned herein, supervisors, incident commanders,
18 training, and/or disciplining officers, and/or decision-makers of the SEATTLE POLICE
19 DEPARTMENT, who acted in concert with the above named Defendants and who
20 devised or approved the police actions responding to the demonstration wherein
21 Plaintiff was arrested and/or to Plaintiff in particular and taken in the incident in

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1 question thereto that is the subject of this action and in doing the things hereinafter
2 alleged, acted under color of state law as agents of the SEATTLE POLICE
3 DEPARTMENT and with that agency's full consent and approval.

4 1.7 Now, and at all times discussed herein, CHIEF GIL KERLIKOWSKE was
5 directly involved and responsible for all training, supervision, and policies in crowd
6 control of demonstrations for the SEATTLE POLICE DEPARTMENT and is on notice,
7 of long standing, of similar and other abuses by the SEATTLE POLICE
8 DEPARTMENT at demonstrations going on since he took his position, without taking
9 sufficient steps to resolve the situation.

10 1.8. DOES 1-100 are, and were at all times mentioned herein, OFFICERS,
11 Supervisors, and the Incident Commander for this incident , Actors, Or Officials
12 Involved In The Planning, Creation, Development, training in, policy leading to the
13 false arrest, false imprisonment, and or use of force against Plaintiff and the violations
14 of Plaintiff's Constitutional Rights in the incident which is the subject of this action, or
15 Exercise Of Police Force and Control, and/or failing to discipline officers thus tacitly
16 encouraging this incident to occur employed against Plaintiff in the incident which is
17 the subject of this action, and in committing the acts and omissions herein alleged
18 hereinafter alleged, acted under color of state law as agents of the SEATTLE POLICE
19 DEPARTMENT who came to the scene, and violated Plaintiff's rights as discussed.

20 1.9 This action is brought pursuant to the First, Fourth, Fifth, Eighth, and
21 Fourteenth Amendments to the United States Constitution, Article 1, Section 5 and

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1 Article 1, Section 7 of the Washington State Constitution, 42 U.S.C. 1983, 1988,
2 Revised Code of Washington Title 9, Chapter 62, Section 10(1), Washington State
3 common law prohibiting assault, battery, intentional infliction of emotional distress,
4 false arrest and false imprisonment, and Washington common law negligence.

5 1.10 On February 15, 2007, the City of Seattle-City Clerk's office was served
6 with a Notice of Claim. The City has not acknowledged the claim, but otherwise has
7 not responded in any way to the claim, and it has been more than sixty days since the
8 claim was filed.

9

10 **II. FACTS**

11 2.1 Plaintiff was a participant in a peaceful permitted demonstration
12 that took place in the City of Seattle on September 24, 2005 in Downtown Seattle to
13 protest the War in Iraq.

14 2.2 The march had a permit from the Special Events Committee of
15 the City of Seattle that was valid continuously until 5:00 PM that day.

16 2.3 The march proceeded in a peaceful and orderly manner through the
17 streets of downtown without incident until approximately 2:45 PM

18 2.3 At approximately 2:45 PM, as the march approached Westlake
19 Plaza, its end point, Defendant Officer Zurcher, Defendant Detective Hernan, and six
20 other officers, names unknown, approached Plaintiff, who was at the very back of the
21 march, and demanded he get out of the street.

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1 2.4 Plaintiff asked why, and pointed out that the permit was still valid for
2 another 2 1/4 hours.

3 2.5 The officers refused to answer

4 2.6 Plaintiff asked several times what law he was breaking and still the police
5 did not answer.

6 2.7 All the while, Plaintiff just wanted to complete the march, the end point of
7 which was less than a block away.

8 2.8 The officers then began trying to push Plaintiff physically toward the
9 sidewalk

10 2.9 Defendant LIEUTENANT LOWE ordered Plaintiff out of the street without
11 justification.

12 2.10 Defendant Officer RICHARD ZURCHER then asked, "Is there anything we
13 can say or do to get you out of the street?"

14 2.11 Plaintiff answered, "You can tell em what law I'm breaking."

15 2.12 Defendant OFFICER RICHARD ZURCHER RESPONDED, "Fine, you're
16 under arrest."

17 2.13 Defendant officers then handcuffed him unnecessarily tightly and hauled
18 Plaintiff off to jail where he was held for several hours before being released on bail.

19 2.14 The criminal case against Plaintiff was filed based on false information
20 given by Defendants ZURCHER AND HERNAN and continued for 10 months, before

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1 the Prosecutor's office moved to dismiss without prejudice, with discovery dismissal
2 motions pending.

3 2.15 Counsel for Plaintiff objected to the dismissal without prejudice, and the
4 judge agreed dismissing with prejudice specifically citing the fact, over the
5 prosecutor's argument that traffic was backed up, that the permit was still in effect,
6 and that Plaintiff had the right to be in the street.

7 2.16 The case fundamentally disrupted Plaintiff's life and work, and caused him
8 to have to expend a significant amount of money in attorney's fees.

9 2.17 Plaintiff violated no law, and the court entirely agreed.

10 2.18 Plaintiff was arrested because the police decided that the march had gone
11 on long enough, regardless of the permit, and because he dared to ask them why they
12 were trying to force him out of the street.

13 2.19 The arrest of Plaintiff is part of a pattern and practice.

14

15 **III. STATEMENT OF DAMAGES**

16

17 3.1 As a direct and proximate result of the intentional and/or negligent
18 acts of Defendants, Plaintiff sustained deprivation of his First and Fourth Amendment
19 Rights, deprivation of liberty, pain and suffering and injury in an amount that will be
20 established at trial.

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1 3.2 As a further direct and proximate result of the intentional and/or
2 negligent acts of Defendants, Plaintiff had to retain legal counsel to protect his liberty
3 and vindicate his rights in court at an amount to be established at trial and for which
4 he is entitled to be reimbursed.

5 3.3 As a further direct and proximate result of the intentional and
6 negligent acts of the Defendants, Plaintiff underwent several hours of imprisonment
7 and then wrongful prosecution

8 3.4 Plaintiff is entitled to compensation for the Constitutional and
9 personal harms Defendants inflicted on him, and the chilling effect their actions had on
10 the exercise of his First Amendment Rights.

11 3.5 Plaintiff is entitled to compensation for the bail he was forced to post
12 to end his false imprisonment.

13

14 **IV. CAUSE OF ACTIONS:**

15

16 **COUNT ONE**
17 **VIOLATION OF CIVIL RIGHTS**
18 **(TITLE 42 U.S.C. SECTION 1983)**
19 **(As To All Individual Defendants and DOES 1-7)**

20 4.1. Plaintiff realleges and incorporates herein by reference the allegations set
21 forth in Paragraphs 1 through 3.5 of this complaint.
22

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1 4.2. In committing the acts complained of herein, Defendants acted under
2 color of state law to deprive Plaintiff as alleged herein, of certain constitutionally
3 protected rights including, but not limited to:
4 (a) The right not to be deprived of liberty without due process of law;
5 (b) The right to be free from invasion or interference with Plaintiff' zone of
6 privacy;
7 (c) The right to equal protection of the law;
8 (d) The right to be free from unreasonable search and seizure;
9 (e) The right to be free from police use of excessive force;
10 (f) The right to be free from discriminatory law enforcement;
11 (g) The right to be free from cruel and unusual punishment.
12 (h) The Rights to participate in a peaceful and lawful First Amendment exercise,
13 to Freely Express his political views, to Petition the Government for Redress of
14 Grievances, to Freely Associate with and Assemble with others to do so without fear
15 of wrongful arrest for doing so.
16 (i) The right to be free from False Arrest, False Imprisonment, and Malicious
17 Prosecution, all in violation of his Fourth and Fifth Amendment Rights.
18 4.3 In violating Plaintiff's rights as delineated above, and other rights according
19 to proof, Defendants acted by verbal threat and intimidation, use of force, unjustified
20 arrest, false imprisonment, or by ratifying personally the above listed conducts, and/or
21 cruel and unusual punishment for a crime Plaintiff did not commit, Defendants acted

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1 to violate Plaintiff's rights under the First, Fourth, Fifth, and Eighth Amendments to the
2 U.S. Constitution.

3 4.4 By knowingly providing false information to the prosecutors to ensure that
4 Plaintiff was prosecuted, Defendants acted to maliciously prosecute Plaintiff in
5 violation of Plaintiff's Fifth and Sixth Amendment Rights.

6 4.5 DOES 1-7 are the other officers involved directly in the incident in question.

7 4.6 As a direct and proximate result of the violations of his Constitutional rights
8 by Defendants, and each of them, Plaintiff suffered general and special damages as
9 alleged in this complaint.

10 4.7 The conduct of Defendants was willful, malicious, oppressive, and/or
11 reckless, and was of such a nature that punitive damages should be imposed in a
12 amount commensurate with the wrongful acts alleged herein.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

COUNT TWO
Violation of Civil Rights
(Title 42 U.S.C. Section 1983)
(As To DEFENDANTS CITY OF SEATTLE, KERLIKOWSKIE, and Page 1, 100)

18 (AS TO DEFENDANTS CITY OF SEATTLE, KERLIKOWSKI, and Does 1-100)
19
20 4.8 Plaintiff realleges and incorporates herein by reference the allegations set
21 forth in Paragraphs 1 through 4.6 of this complaint.

22 4.9 At all times herein mentioned, Defendant KELIKOWSKE acted in his
23 official capacities as the CHIEF of the SEATTLE POLICE DEPARTMENT over

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1 Defendants ZURCHER, HERNANR, AND LOWE, and failed to properly supervise,
2 train, and discipline ZURCHER, HERNANR, AND LOWE, and similar acts and actors
3 for the eight years that he has been in his position, and acted to ratify ZURCHER,
4 HERNANR, AND LOWE's inappropriate, illegal, and tortious conduct and intentional
5 acts to deprive Plaintiff of his rights secured by the Constitution of the United States,
6 including, but not limited to his rights under the First, Fourth, Fifth, Eighth, and 14th
7 Amendments to the U.S. Constitution.

8 4.10 In committing the acts complained of herein and in his official and
9 individual capacity, Defendant KERLIKOWSKE acted with a design and intention to
10 deprive Plaintiff of his rights secured by the Constitution of the United States and
11 acted with deliberate indifference to Plaintiff's rights.

12 4.11 Defendants DOES 8-100 are supervisors and other officers at the
13 SEATTLE POLICE DEPARTMENT who acted specifically to ratify ZURCHER,
14 HERNANR, AND LOWE's inappropriate, illegal, and tortious conduct and intentional
15 acts to deprive Plaintiff of his rights secured by the Constitution of the United States,
16 including, but not limited to his rights under the First, Fourth, Fifth, Eighth, and 14th
17 Amendments to the U.S. Constitution, and acted with a design and intention to deprive
18 Plaintiff of his rights secured by the Constitution of the United States and acted with
19 deliberate indifference to Plaintiff's rights.

20 4.12 As a direct and proximate result of the acts complained of herein, Plaintiff
21 has suffered general and special damages as set forth in this complaint.

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1 4.13 The conduct of Defendants was willful, malicious, oppressive, and/or
2 reckless, and was of such a nature that punitive damages should be imposed in an
3 amount commensurate with the wrongful acts alleged herein.

4 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.
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10 **V. JURY TRIAL DEMAND**

11 5.0 Plaintiff hereby demands a jury trial in this matter.
12

13 **VI. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

15 1. For general damages including pain and suffering together with special

16 damages for Plaintiff's reasonable and necessary legal expenses, bail, and medical

17 expenses both past and future, the exact amount of which will be established at the

18 time of trial;

19 2. For punitive damages in an amount to be proven at trial pursuant to Federal

20 and State law;

21 3. For actual attorney's fees and litigation costs pursuant to 42 U.S.C.

22 1988;

23 4. For statutory attorneys fees and costs; and

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1 5. For court supervised training and regulations requiring that officers if the
2 Seattle Police Department allow peaceful orderly marches to proceed through the
3 streets of Seattle without use of force or arrest against participants, or to take action
4 because they decide the march should be over, regardless of the permit allowances.

5 6. For such other and further relief as the Court deems just and proper.

6

7 DATED December 21, 2007



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10 LAWRENCE A. HILDES
Attorney for Plaintiff JASON SCHMIDT

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